

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

UNITED STATES OF AMERICA FOR
THE USE AND BENEFIT OF A.H BECK
FOUNDATION CO., INC.,
Complainant,

v.

SELECTIVE INSURANCE COMPANY
OF AMERICA, INC.,
Respondent.

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Civil Action No. _____

ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Complainant UNITED STATES OF AMERICA FOR THE USE AND BENEFIT OF A.H. BECK FOUNDATION CO., INC. (hereinafter referred to as "A.H. BECK"), and files its Original Complaint against Respondent SELECTIVE INSURANCE COMPANY OF AMERICA, INC. ("SELECTIVE"). In support of this Complaint, A.H. BECK would respectfully show as follows:

I. PARTIES

1. Complainant A.H. BECK is a domestic corporation with its principal place of business located at 9014 Green Road, Converse, Texas 78109.

2. Respondent SELECTIVE is believed to be a foreign corporation licensed to conduct business in the State of Texas which can be served with citation through its registered agent, Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, Travis County, Texas, 78701-3218.

II. VENUE AND JURISDICTION

3. Pursuant to the Miller Act, 40 U.S.C. § 3133, this Court has exclusive jurisdiction over this matter. Jurisdiction is further supported by 28 U.S.C. § 1331, as a Federal Question is involved. This is an action on a Miller Act Payment Bond for labor and material furnished for the improvement of a Federal construction project located in Eagle Pass, Maverick County, Texas.

4. Venue is mandatory in the Western District of Texas, Del Rio Division, pursuant to 40 U.S.C. § 3133(b)(3)(B) as this action constitutes a suit on two (2) separate Miller Act Payment Bonds issued by Respondent SELECTIVE for labor and material furnished by Complainant A.H. BECK for the improvement of two (2) separate Federal construction projects located in Eagle Pass, Maverick County, Texas.

III. BRIEF STATEMENT OF FACTS

5. On or about February 5, 2021, Complainant A.H. BECK, as a first-tier subcontractor, entered into a written Subcontract Agreement (the “Subcontract”) with non-party Spencer Construction, LLC (“Spencer Construction”), as the prime contractor, for the construction of two (2) bridges for the U.S. Customs and Border Protection Agency in Eagle Pass, Maverick County, Texas. The two projects made the basis of this Complaint are known as Bridge 1130 (the “1130 Bridge Project”), Contract No. 70B01C20C00000159, and Bridge 1152 (the “1152 Bridge Project”), Contract No. 70B01C20C00000158 (with both projects sometimes being referred to collectively herein as the “Projects”). More specifically, Complainant A.H. BECK was engaged by Spencer Construction to drill 48” shafts some 208 to 236 linear feet into the underlying bedrock beneath the Projects to support the bridge structures, with such drilling being

conducted on an expedited basis because Spencer Construction's prior drilling subcontractor defaulted in its work and was terminated.

6. Respondent SELECTIVE is the surety engaged by Spencer Construction to issue Payment Bonds for the use and benefit of subcontractors and suppliers like Complainant A.H. BECK who performed work and provided labor on the Projects for which they have not been paid. The two (2) Payment Bonds made the basis of this Complaint are Respondent SELECTIVE's Bond Nos. 1235182 and 1235183 (the "Payment Bonds" or "Bonds").

7. Complainant A.H. BECK fully, timely and properly completed its drilling work on the Projects in March of 2021, yet, despite repeated demands for payment and the perfection of its Miller Act claim against the Projects' two Payment Bonds, \$85,800.00 remains past-due and owing to A.H. BECK for its work on the 1130 Bridge Project and an additional \$46,200.00 remains past-due and owing to A.H. BECK for its work on the 1152 Bridge Project. Collectively, and excluding interest on the debt and attorneys' fees, there remains a total debt sum in the amount of \$132,000.00 owed to Complainant A.H. BECK for its work on the Project (the "Debt").

IV. BOND CLAIM

8. Complainant A.H. BECK asserts a Miller Act bond claim pursuant to 40 U.S.C. § 3131 et. seq. against Respondent SELECTIVE.

9. Complainant A.H. BECK has a direct contractual relationship with Spencer Construction such that no notice was required. However, even in the alternative, were there no such direct contractual relationship, Complainant A.H. BECK provided timely

notice to Spencer Construction and Respondent SELECTIVE with regard to A.H. BECKS' bond claim. Accordingly, Complainant A.H. BECK perfected its bond claim.

10. Despite Complainant A.H. BECK's timely notices and request for payment of its bond claim, Respondent SELECTIVE has failed and refused, and continues to fail and refuse, to honor its statutory and contractual obligations under the Payment Bonds.

11. This lawsuit is being brought no later than one (1) year after the date on which the last of the labor was performed or material was supplied by Complainant A.H. BECK. See 40 U.S.C. § 3133(b)(4).

12. Complainant A.H. BECK has conducted and completed all conditions precedent to pursuing this Miller Act bond claim and lawsuit. Complainant A.H. BECK seeks a minimum of \$132,000.00 as damages from Respondent SELECTIVE in relation to the unpaid work and labor it furnished to the Projects.

V. ATTORNEYS' FEES

13. Pursuant to equitable principles, Complainant A.H. BECK seeks recovery (to the extent it is entitled), of its attorney's fees, litigation costs and court costs, incurred as a result of enforcing the Miller Act bond claim. Complainant A.H. BECK's Subcontract with Spencer Construction provides for the recovery of attorney's fees by the prevailing party.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Complainant, United States of America for the Use and Benefit of A.H. Beck Foundation, Co., Inc., prays that this Court find in its favor on all issues, award all damages sought, award reasonable and necessary attorney's fees, costs of court, pre-and post-judgment interest at the highest

rates allowed by law, and for such other and further relief as Complainant, United States of America for the Use and Benefit of A.H. Beck Foundation, Co., Inc., may be justly entitled.

Respectfully submitted,

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